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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. [redacted]146

JOHN E. RING,

Petitioner,

v.

JUNE STRELECKI, Director of Motor Vehicles, and STATE OF NEW JERSEY,

Respondents.

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPERIOR COURT OF NEW JERSEY

CARL E. RING,
1701 Palisade Avenue,
Union City, New Jersey,
Attorney for Petitioner.

249 Press of Fremont Payne, Inc., 80 Washington St., N. Y.—BOwling Green 9-8153

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No. 1374

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PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPERIOR COURT OF NEW JERSEY

The brief of the respondents in opposition to the petition presents:

1. A question of JURISDICTION on the ground that the constitutional questions were not timely raised, and;

2. A claim that the case is MOOT because of action taken by the Division of Motor Vehicles since the filing of this petition.

Jurisdiction

Respondents contend that, except for double jeopardy, the other constitutional questions were not submitted to the Appellate Division but were raised for the first time in a petition to the Supreme Court of New Jersey, which was denied.

Point One in petitioner's brief in the Appellate Division (p. 6) was:

> "THE SUSPENSION ORDER ISSUED WITHOUT AND PRIOR TO A HEARING DENIED DUE PROCESS AND IS VOID."

Point Three in the brief (p. 7) argues:

> "The July 27th hearing after suspension is not a substitute nor equivalent to a due process hearing to first determine the Director's right to suspend."

The opinion of the Appellate Division shows at pages 20 and 23 in the petition that both of these questions were decided against the petitioner, the Court stating:

> "Due process does not necessarily require in every instance a hearing before action is taken by an administrative agent."

The questions of illegal seizure and unusual punishments were first raised in that form in the Supreme Court of New Jersey, which is allowable under Rule 1:7-1 (c), which provides:

> "If the questions involved include any not presented to the Court below this fact should be noted."

The fact was noted in compliance with the rule by the following mandatory statement at page 4 of the petition to that Court:

> "The questions on the foregoing page were not presented to the Appellate Division as specifically involving questions arising under the Constitution of the United States, but they were all presented in terms of general law."

The questions were then presented to this Court in exactly the same form as presented to the Supreme Court of New Jersey.

This complies with the requirements of this Court which held in Chicago *B & Q Railway* v. *Chicago*, 166 U. S. 227, 17 S. C. Rep. 581, that it is sufficient if it appears from the record that the federal question was raised in the State Court:

> "in such manner as to bring it to the attention of that Court."

In that case, the federal question was first raised on a motion for new trial, which was denied.

By this procedure, the petitioner assured that the highest Court in New Jersey had an opportunity to and was requested to rule on the constitutional questions exactly in the same form as presented to this Court in this petition.

The Case Is Not Moot

The respondents' brief states (p. 2):

> "Recent action by the Director of the Division of Motor Vehicles rends the within petition moot."

The petitioner's license was suspended for three months June 27, 1966 for a $10 traffic violation in New York.

Now comes the respondent, and states (p. 5) that the point rule was amended effective July 12, 1966:

"to delete violations occurring in other states from consideration."

That was the first notice to the petitioner of the change in regulations.

Notwithstanding such change, the Assistant Director on July 20, 1966 ordered a hearing and ordered that the petitioner could not drive in the meantime (Ex. 4 in petitioner's Appellate Division brief and appendix) and thereafter on September 8, 1966 (Ex. 10) the Division of Motor Vehicles affirmed that the three-month suspension was "fair and warranted."

The Appellate Division stayed the suspension August 19, 1966. The record does show that that Court had notice of the change in the regulations and on March 8, 1967 sustained the three-month suspension for the New York violation as reasonable under the point rule and denied a formal motion for a stay pending the petition to this Court.

The Director can, under this decision, reinstate the rule at her will.

Though the petitioner had sought by every means possible in the Motor Vehicle Bureau and in all the Courts of New Jersey to have the suspension set aside or reduced, it was not until after this petition was filed and an application was made to Mr. Justice Brennan for a stay that the respondents gave notice of the change in the rule "effective" July 12, 1966 and decided to cancel the remaining six weeks suspension.

This was not done in recognition of due process or other constitutional rights but solely as an expedient, in the hope that it would avoid a ruling on the questions presented. This is shown by the respondents' attorney's letter of May 24, 1967 to the Clerk of this Court, printed herein.

The petitioner has not obtained administratively the:

"same relief which he now seeks from this Court."

The petitioner seeks a ruling to set aside a summary suspension, a practice of the respondents, which has cost the petitioner several thousand dollars and nearly seventeen months suspension in the last three years, and the six weeks suspension cancelled was only a part of the relief prayed for. The petitioner and all other licensees are still subject to the "summary" rules which are made and invoked at the arbitrary will of the Director. The respondents' brief (p. 8) contends that the petitioner has not:

> "been unconstitutionally treated,"

but affirms:

> "On the contrary, it is strongly maintained that the regulation of the Division of Motor Vehicles which permits a summary suspension of driving privileges is constitutional in all respects,"

and (p. 10) that:

> "The Division of Motor Vehicles had good cause and reasonable ground to suspend petitioner's driving privileges,"

even though the rule was changed a few days later.

Mootness is a question for this Court and this case comes squarely within *Liner* v. *Jafco*, 375 U. S. 301, 84 S. C. Rep. 391, which distinguishes *Love* v. *Griffith*, 266 U. S. 32, 45 S. C. Rep. 12.

In that case, an injunction pertaining to a special rule for a specal election had been denied and the case reached this Court after the election, so that it was impossible to grant the injunction, the only relief prayed for. Here, the relief prayed for is to set aside a suspension and a judgment affirming that suspension because it denied due process and other constitutional rights and because the judgment on the record extends into the future, as in *Liner* v. *Jafco*.

It is the law of the State to govern the right of petitioner and all other licensees in the future and the several illegal summary suspensions have greatly increased petitioner's insurance rates and created unfavorable presumptions against him on his motor vehicle record.

A hearing after suspension is not sufficient.

An automobile license is property:

"which may not be taken away except by due process." *Bechler* v. *Parsekian*, 36 N. J. 242, 257.

The real question is whether a hearing by the Director, under any arbitrary rules she chooses to make, one month after suspension, where there was no imminent danger, and a decision several weeks later and usually after the suspension expires is due process.

This issue is clearly stated in the question presented for review (Question 2 by the petitioner and Question 3 by the respondents) and is squarely covered by *Armstrong* v. *Manzo*, 380 U. S. 545, 85 S. C. Rep. 1187.

CONCLUSION

Petitioner prays that this writ of certiorari be granted.

Respectfully submitted,

Carl E. Ring,
Attorney for Petitioner, John E. Ring,
1701 Palisade Avenue,
Union City, New Jersey.

Respondents' Attorney's Letter of May 24, 1967

COPY

STATE OF NEW JERSEY

DEPARTMENT OF LAW AND PUBLIC SAFETY

May 24, 1967

Mr. E. C. Schade, Assistant Clerk
Supreme Court of the United States
Washington, D. C. 20543

Re: Ring v. Strelecki, etc., et al.

No. 1374, O. T. 1966

Dear Mr. Schade:

This is in reply to your letter of May 22, 1967 and in confirmation of my telephone conversation with Mr. Rodak of your office on May 24, 1967. This is to advise you that the respondents, Director Strelecki of the Division of Motor Vehicles and the State of New Jersey, have no objection to the petitioner's, John E. Ring, application for a stay pending disposition of the petition for a writ of certiorari in the captioned matter.

This is to further apprise you of the fact that such stay may be unnecessary in that the Director of the Motor Vehicle Division intends to amend and revise her order suspending the petitioner's driving privileges for three months by reducing the suspension to the period of time heretofore already incurred. The petitioner presently has the use of his driver's license and will continue to have such usage since no action to recall his license is contemplated for the violation involved herein in view of the treatment to be accorded the petitioner by the Director. The brief to be filed in opposition to the petition

for a writ of certiorari by the respondents will elaborate on the Director's action and will demonstrate that the cause will consequently be mooted.

I trust that this letter will serve as an appropriate response setting forth the respondents' position in connection with the petitioner's application for a stay pending disposition of the petition for a writ of certiorari.

Respectfully yours,

/s/
RICHARD NEWMAN
Deputy Attorney General

RN:fg
cc: Carl E. Ring